

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSCAR MERCADO,
Petitioner,

v.

JOHN LEMPKE, Superintendent, Five Points
Correctional Facility,
Respondent.
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USDC SDNY
DOCUMENT
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MEMORANDUM DECISION

07 CV 9865 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Paul E. Davison's Report and Recommendation ("R&R"), dated July 25, 2011 (Doc. #51), on Oscar Mercado's petition for a writ of habeas corpus. Judge Davison recommends the Court deny the petition.

A district court reviewing a magistrate judge's R&R "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the recommended ruling "[w]ithin fourteen days after being served with a copy [of the recommended disposition]." *Id.* The district court may adopt those portions of the R&R to which no timely objections have been made, provided no clear error is apparent from the face of the record. *See Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

Petitioner's time to file objections to the R&R has run, and he has filed no objections.¹ I discern from the face of the record no clear error in the R&R, and adopt it as the decision of the Court. The petition for a writ of habeas corpus is DENIED.

¹In a letter dated July 29, 2011, petitioner made an application for an extension to file his objections to the R&R. The Court granted the application and gave petitioner until September 16, 2011 to file his objections (Doc. #53).

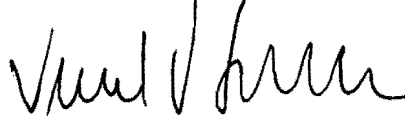
As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005); Lozada v. United States, 107 F.3d 1011, 1017 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997).

The Court also finds, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this ruling would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 445 (1962).

The Clerk of the Court is instructed to close this case.

Dated: October 31, 2011
White Plains, NY

SO ORDERED

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge